* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : April 21, 2007
Date of decision : May 24, 2007

\+ CRL.REV.P. 717/2004 & Crl.M.A.No.10351/2004

DEVENDER PRASHAD ..... Petitioner
Through Ms. Sunita Jonwal, Advocate

Versus

SHANTI DEVI & OTHERS ..... Respondents
Through: Mr. O.P. Saxena, Advocate for the State.
Mr. I.C. Tewari, Advocate.

**CORAM:**

**Mr. Justice S. Ravindra Bhat**

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**% Mr. Justice S. Ravindra Bhat**

1. The revision petition challenges the order passed by the Learned Additional Sessions Judge (hereafter "trial Court") on 16.09.2004. The accused respondents were acquitted of charges under Sections 304-B/498-A Indian Penal Code (IPC).

2. The brief facts necessary to decide this petition are that the petitioner is the father of Ms. Anju (hereafter referred to as "the deceased"). The deceased and Ashok Kumar (hereafter referred to as "the husband") were married on 12.02.1993. Three children were born out of the wedlock. The deceased died an unnatural death on 13.08.1997; she succumbed to extensive burn injuries.

3. The Petitioner alleged that after 12 days of marriage, the deceased complained to him that she was being harassed for dowry, by the husband and the other accused respondents. The mother-in-law and sister-in-law (Jethani) Vimlesh used to harass and beat her. It was alleged that in 1996 the husband allegedly visited the Petitioner and took him on his scooter to a Society in Mandawali. He thereafter put a bottle in the Petitioner's mouth and demanded a plot of 50 sq. yards along with Rs. 2 lakhs. It is alleged that the husband used to beat the deceased and his children.

4. The prosecution alleged that one day prior to alleged unnatural death of the deceased, the husband beat her up in the Petitioner's presence. The petitioner was also pushed out of the house. On 13.08.1997 at 9.30 A.M., the deceased's mother was informed that she was hospitalized due to burn injuries. She was sure that the brutal act was committed by the husband and his relatives i.e. the other Respondents.

5. The prosecution case was further that the deceased had died an unnatural death, within 7 years of her marriage. She was also subjected to dowry harassment and cruelty in her matrimonial home. The petitioner and his wife, i.e. parents of the deceased made specific allegations against all the Respondents.

6. The Trial Court framed charges under Sections 304B/498A/34 IPC against all the accused. It acquitted the other Respondents and convicted the husband, under Section 304 IPC. The present petition is directed against the acquittal of the Respondents.

7. The extracts of the order of the trial court dated 16.09.2004 are as follows;

> *"in the absence of any direct or substantive evidence against the accused persons namely Shanti, Dinesh, Suresh and Smt. Vimlesh, and the fact that when two views from the evidence are possible, the view favorable to the accused should be adopted and benefit of doubt should be extended to such accused and the fact that the fact that*

*prosecution has failed to prove any demand soon before the death of the deceased Anju, by the accused Shanti, Dinesh, Suresh and Smt. Vimlesh and there is lack of any corroborative evidence. I hereby acquit accused persons namely Shanti, Dinesh, Suresh and Smt. Vimlesh for the commission of the offence punishable u/s. 304B, IPC by giving benefit of doubt to them".*

*The materials on record in this case amply prove, as discussed and noticed hereinabove, that "soon before the unnatural death of Anju, which took place within seven years of her marriage, she was subjected to cruelty and harassment both for and in connection with a demand for dowry by her husband Ashok and that the facts brought on record further prove the existence of a proximate and live link between the effect of dowry demand and the concerned death. The incident of cruelty and demand is not remote in time. The evidence on behalf of accused persons of DW1 to DW3 does not inspire any confidence and is also not relevant. I have gone through the case laws cited by the Ld.*

*Counsel for the accused Ashok, but I do not find them helpful to the case a accused Ashok, as the facts of those cases differ from the facts of present case. Accused Ashok Kumar has miserably failed to substantiate his defence or rebut the main allegations and presumption u/s. 113B of the India Evidence Act……*

*Hence in view of the above facts. I have no hesitation to hold that in view of the evidence on record as well as presumption under Section 113-B of Indian Evidence act, that accused Ashok Kumar has failed to rebutt the presumption. Hence, prosecution has proved that on 13.08.1997 at A-355, Janakpuri, Delhi, accused Ashok being husband of deceased Anju caused dowry death of deceased Anju, which is punishable u/s. 304B, IPC.*

8. Ms. Sunita Jonwal, learned counsel, submitted that the trail court fell into manifest error in improperly appreciating the materials and evidence on record, which were sufficient to lead to conviction of all the accused respondents, and not merely the husband. She relied upon the testimonies of PW-1 and PW-2, parents of the deceased, who maintained in their statements under Section 161, as well as 164 (recorded before the Magistrate) about the repeated and specific acts of cruelty and dowry harassment meted out to the deceased, throughout her married life. It was submitted that the marriage took place on 12-2-1993, and the death occurred due to 100% burns on 13-8-1997, i.e within seven years of the marriage. The facts clearly made out applicability of Section 113-B of the Evidence Act. The court therefore, had to see and weigh the material circumstances with greater care in view of legislative recognition of vulnerability of women, in such situations.

9. It was submitted that the deposition of PW-1 established that about 15 days prior to her death, the deceased told him that all the accused, i.e the husband, his mother and both his brothers used to repeatedly beat her, press that the sum of Rs. 2 lakhs, and a plot measuring 50 square yards should be given to them. This was corroborated by the testimony of PW-3. Counsel submitted that there was no worthwhile cross examination on this aspect. Therefore, the trial court ought to have held that the incident was a direct and natural consequence of the demand for dowry, soon before death of the deceased; it was reasonable, in the absence of any explanation, much less cogent explanation, of the accused, about the attendant circumstances

to conclude that such death was caused due to the demand. Learned counsel relied upon the judgments reported as *Kans Raj -vs- State of Punjab* 2000 (3) JCC, (SC) 665; *Venu Gopal -vs- State of Karnataka* 1999 Cr. LJ 29 (SC); *Vidya Devi -vs- State of Haryana* 2004 (1) CCC (SC) 148.

10. Learned counsel urged that the trial court committed grave error in not giving any weight to the letters written by the deceased to her parents, which had been produced, as Ex A and Ex-B; in which she leveled specific allegations of dowry demands. It was submitted that these documents were admitted by the accused; they disclosed their guilt. Hence, the prosecution did not have to prove contents of the letters. It was also contended that the contradictions, and discrepancies pointed out by the defence, i.e the petitioners were minor and inconsequential in nature. They, in any case, could not have deflected from the only finding that should have been rendered, on a correct appreciation of the evidence, i.e the guilt of all the accused.

11. Shri I.C. Tewari, learned counsel opposed the petition. He submitted that this court cannot re-appreciate evidence, and materials, as if it were exercising appellate jurisdiction. The legislature advisedly and deliberately did not permit orders of acquittal to be challenged by informants; only the State could seek leave to appeal, which could be given in some, and not all cases. As far as the petitioner is concerned, he was unable to point to any single instance or ground which could persuade the court to exercise the restricted and circumscribed jurisdiction under Sections 397/401.

12. Learned counsel for the accused relied upon the statements recorded in the inquest proceedings, particularly by PW-1 and PW-2, and submitted that these were recorded on 14-8-1997. Both parents of the deceased did not say anything about role of any accused, except in the most general and vague manner. It was contended that the accused were living separately away from the couple's matrimonial home. The evidence, established that the accused mother-

in-law had sold some property to enable the deceased and Ashok, the husband, to live together separately; they did so. It was submitted that all the serious allegations which could link the incident with ingredients under Section 304-B did not admittedly pertain to the respondent accused. In the totality of the facts, the trail court acted within the bounds of law in acquitting the other accused.

13. The records of the trial Court were called for. Counsel for the parties relied upon the depositions and statements, in support of the contentions.

14. The deceased Anju died of extensive (100%) burn injuries. Two children were born out of the wedlock. The death occurred within seven years of marriage. Her husband was convicted on both counts. The question is whether there was insufficient material, and evidence to convict the other accused, of both, or either offence.

15. PW-1 and PW-3 are the most material witnesses; they are parents of the deceased. The petitioner, PW-1, in his deposition stated that he had witnessed the husband severely beating his daughter and strangling her. When he tried to rescue her the accused gave him fist blows on his face and also gave a knee blow, pushed him outside the house and asked him to take his daughter away. He also stated that he was abusing loudly. People had gathered there and advised him not to take back his daughter at that time. Thereafter he went away to spend the night in a relative's place. He deposed that the next day he went to the husband's mothers place at Janakpuri, when the accused Vimlesh informed him that Anju had sustained burn injuries and was admitted at RML Hospital, New Delhi. The Petitioner stated that he went to RML Hospital at about 8 P.M and his daughter expired at about 8.10 P.M. The police had recorded his statement and he signed it. The police did not record his wife's statement. The Petitioner stated in his statement that after about 15 days of marriage the accused Shanti,

Dinesh, Suresh and his wife Vimlesh and her husband Ashok demanded dowry. He further stated that at the time of the incident his daughter was living in the upper portion of the house and the ground floor was vacant. The Petitioner further stated that no members of the public had come into the place of occurrence before he reached there.

16. PW-3: Smt. Vijaywati mother of the deceased stated that at the time of marriage they had given articles of dowry to the accused, beyond their financial capacity. After a fort-night of marriage, the husband, mother-in-law Shanti, sister-in-law Vimlesh and brothers of accused namely Raju and Suresh started harassing them for more dowry. They were demanding a cash of Rs. 20,000/- and a plot of land measuring 50 square yards, This was informed about 15 days prior to death. They used to threaten the deceased with death if those demands were not met with. PW-2 stated that on 13.08.1997, at about 9.30 A.M. some neighbours of the accused informed her that Anju had been set on fire by accused persons. She further stated that her daughter expired on the same evening at 5.30 P.M. PW2 further stated that the deceased had disclosed that the husband and his brothers treated her badly and harassed her for dowry.

17. The trial Court discussed the above evidence, and also the statements recorded during the inquest. On the basis of its overall assessment of the materials, it concluded that the husband's guilt had been established. It proceeded to convict him, under Section 304-B. So far as other accused were concerned, the Court concluded that there was no substantive evidence against them, indicative of their role in threatening Anju with cruelty or harassment, soon before the death, for purposes of dowry, warranging conviction for that offence.

18. The analysis of Ex.PW-1/A (statement of PW-1 in the inquest) and Ex.PW-3/A (statement of PW-3 in the inquest) disclose that both had identically deposed as to the role of the husband in the demand for dowry, just before the date of incident, when he asked to be paid Rs.2 lakhs,

besides purchase or handing over of a 50 square yard plot. PW-1 also mentioned about the incident when he was threatened on that account. However, there was a significant variation when the deposition was recorded in court, after some time. This time, though the names of other accused were mentioned by PW-3, no specific details were given. The trial Court felt that this material was insufficient to record conviction of the other accused. The offence under Section 304-B is a serious one; courts should refrain from convicting accused in the absence of convincing proof, beyond reasonable doubt that the death was solely on account of harassment for the purpose of dowry, soon before the incident. It has been held (Ref. *Sunil Bajaj vs. State of M.P.* AIR 2001 SC 3020; *State of Orissa Vs. Niranjan Mohapatra* 2005 SCC (Crl) 1251) that inconsistent statements and contradictions should not be ignored, specially if they are of relatives of deceased. As far as appreciation of two documents are concerned, they were not exhibited in the proceedings, and marked in evidence. It would be extremely unsafe, at this stage, to rely on these documents when they were not put to the accused, at the trial.

19. On an overall consideration of these facts I am of the opinion that the findings of acquittal recorded by the trial Court in relation to the respondent accused so far as it relates to Section 304-B IPC does not require interference.

20. The above findings, however, are not conclusive of the matter. All the accused admittedly were charged with committing offences under Section 498-A. The trial Court did not of convict the accused the husband Ashok Kumar of that offence. However, the discussion by the trial Court shows that it completely ignored analysis of the evidence viz-a-viz the charge relating to Section 498-A IPC.

21. The difference between Section 304-B IPC and Section 498-A IPC, both of which deal with a species of matrimonial offence, cannot be lost sight of. When the Indian Penal Code was

amended, the legislature consciously inserted these two provisions. Section 498-A deals with a general kind of behavior which may include cruelty with the object of illegal demands for dowry [sub-clause(b) ]. However, Section 304-B was enacted as a distinct offence where an unnatural death occurs on account of dowry demand soon before the incident. At this stage it would be relevant to notice Section 498-A, which reads as follows :-

> *"**498A. Husband or relatie of husband of a woman subjecting her to cruelty.-** Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*
>
> *Explanation.- For the purpose of this section, "cruelty" means-*
>
> *a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
>
> *b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."*

22. It would be immediately apparent that besides the charge of cruelty on account of dowry harassment, other acts of cruelty are also culpable and if proved, punishable. The distinction between Section 304-B and Section 498 which in certain situation might overlap yet have distinct zones of operations, was commented upon by the Supreme Court in *K. Prema S. Rao Vs. Yadla Srinivasa* 2003 (1) SCC 217.

23. What emerges from the above discussion is that the trial Court, which was expected to consider the evidence on the basis of the charges as framed, completely failed to do so, as regards Section 498-A, so far as the respondents are concerned. This in my opinion constitutes a glaring irregularity which has to that extent vitiated its findings. However, this Court in view of Section 401(3) which specifically debars the High Court from reversing a finding of acquittal and return

one of conviction, the most appropriate course

would be to desist from further discussion of the evidence on this aspect and remit the matter for consideration by the trial Court.

24. In view of the foregoing discussion, the revision petition is partly allowed. The case shall be re-examined afresh, so far as the present accused respondents are concerned, as regards the charge under Section 498-A, IPC. The Court shall endeavor to complete the proceedings after hearing both parties and render its judgment limited, to the point of remission within six months from the date of receipt of the file. The petition is partly allowed in the above terms.

May 24, 2007 (S. RAVINDRA BHAT)

JUDGE